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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. —

RECONSTRUCTION FINANCE CORPORATION, PETITIONER

v.

WESTERN PACIFIC RAILROAD CORPORATION, A CORPORATION; A. C. JAMES CO., A CORPORATION; THE RAILROAD CREDIT CORPORATION, A CORPORATION; THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION; IRVING TRUST COMPANY, A CORPORATION, AS SUBSTITUTED TRUSTEE UNDER THE GENERAL AND REFUNDING MORTGAGE OF THE WESTERN PACIFIC RAILROAD COMPANY; FREDERICK H. ECKER, JOHN W. STEDMAN AND REEVE SCHLEY, CONSTITUTING THE INSTITUTIONAL FIRST MORTGAGE BONDHOLDERS COMMITTEE; AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND SAMUEL ARMSTRONG, AS TRUSTEES UNDER THE FIRST MORTGAGE OF THE WESTERN PACIFIC RAILROAD COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of Reconstruction Finance Corporation, a public corporation

created by Act of Congress,¹ prays that a writ of certiorari issue to review the decree of the Circuit Court of Appeals for the Ninth Circuit rendered in this cause on November 28, 1941 (R. 2663), reversing an order of the District Court for the Northern District of California. The latter order approved a plan of reorganization which had, theretofore been approved and certified to the District Court by the Interstate Commerce Commission in proceedings for the reorganization of The Western Pacific Railroad Company.

OPINIONS BELOW

The initial report and order of the Interstate Commerce Commission (R. 194) are reported in 230 I. C. C. 61; its report and order on further consideration (R. 300) are reported in 233 I. C. C. 409; and its order denying the further petition of the Debtor for modification of the plan approved by it (R. 884) is reported in 236 I. C. C. 1. The opinion of the District Court (R. 1569) is reported in 34 F. Supp. 493. The opinion of the Circuit Court of Appeals (R. 2663) is reported in 124 F. (2d) 136.

JURISDICTION

The decree of the Circuit Court of Appeals was entered November 28, 1941 (R. 2675-2676). Petitions for rehearing were filed by Irving Trust Company, a trustee under a mortgage indenture, and by the Debtor, The Western Pacific Railroad

¹ Act of January 22, 1932, c. 8, 47 Stat. 5.

Company, whose appeals had been ordered dismissed by the decree of November 28, 1941. On February 12, 1942, a rehearing was granted. On February 16, 1942, an order was entered setting aside so much of the decree of November 28, 1941, as had dismissed the appeals of the Irving Trust Company and of the Debtor, but denying all further relief sought by the petitions for rehearing (R. 2618). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 24 (c) of the Bankruptcy Act.

QUESTIONS PRESENTED

1. Whether the findings and conclusions of the Interstate Commerce Commission were sufficient to support the exclusion of the stockholders and unsecured creditors of the Debtor from participation in the reorganized company, as provided in the plan approved by the Commission and the District Court.

2. Whether the findings and conclusions of the Interstate Commerce Commission were sufficient to support the allocation of the securities of the reorganized company among those found to be entitled to share therein, in the manner provided in the plan.

3. Whether, as the Circuit Court of Appeals indicated in its opinion, the District Court misconceived the relationship between the functions of the Interstate Commerce Commission and those

of the District Court in connection with plans of reorganization under Section 77 of the Bankruptcy Act.

STATUTE INVOLVED

The relevant portions of Section 77 of the Bankruptcy Act are set forth in the Appendix to the petition for a writ of certiorari in *Ecker et al. v. Western Pacific Railroad Corp.*, No. 819, this Term, seeking review of the same decree of which review is sought by this petition.

STATEMENT

The Western Pacific Railroad Company filed its petition for reorganization under Section 77 of the Bankruptcy Act on August 2, 1935 (R. 4-11). Plans of reorganization were filed with the District Court and with the Interstate Commerce Commission in accordance with Section 77 (d). Hearings before the Commission commenced March 23, 1936 (R. 1853), and on September 28, 1939, a plan was certified by the Commission to the District Court (R. 1034-1035). The District Court approved the plan certified by the Commission (R. 1600). The Circuit Court of Appeals, however, reversed the order approving the plan and remanded the cause to the District Court with directions to dismiss it or, in the court's discretion, to refer it back to the Commission for further action (R. 2675-2676).

Reconstruction Finance Corporation holds (1) Trustees' Certificates in the principal amount of

approximately \$10,000,000, which were issued by the Trustees of the Debtor with the approval of the District Court, and (2) five secured promissory notes issued by the Debtor, which aggregate, with interest to January 1, 1939, the sum of \$3,862,869.98. Reconstruction Finance Corporation was permitted to intervene in the court and Commission proceedings (R. 2621-2622) and has actively supported the plan of reorganization which the District Court approved.

Petitions for writs of certiorari to review the decree of the Circuit Court of Appeals have been filed by the Institutional Bondholders Committee and by Crocker First National Bank of San Francisco and Samuel Armstrong, as trustees under a mortgage given by the debtor. *Ecker et al. v. Western Pacific Railroad Corp.*, No. 819, this Term; *Crocker First National Bank et al. v. Western Pacific Railroad Corp.*, No. 820, this Term.² The relevant facts are adequately stated in those petitions and need not be repeated.³

REASONS FOR GRANTING THE WRIT

1. In the present reorganization proceedings the Interstate Commerce Commission, after detailed consideration of the assets and financial history of

² A cross-petition has been filed by the Debtor, No. 885, present Term.

³ It is respectfully requested that the certified transcript of record and additional printed copies filed with the petition in No. 819 be deemed to accompany this petition within the meaning of Rule 38 and that reference may be made to them accordingly.

the Debtor and of its past, present, and probable future earnings, determined the maximum permissible capital structure for the Debtor (R. 364). Since the capital structure so determined would not justify any participation by the stockholders of the Debtor, the Commission found that the equity of the stockholders was without value; it further found that the claims of the unsecured creditors were without value and that therefore they, too, must be excluded from participation (R. 269-270, 392-393). The Commission then allocated the proposed new securities among the classes of creditors held entitled to share in the plan in the manner provided therein (R. 389-394). It based this allocation upon detailed consideration of the various claims and of the assets available, for the payment thereof and, in its report, it set forth at length the reasons for its conclusions (R. 194, 300, 884). The District Court approved the plan certified to it by the Commission and adopted the Commission's findings as its own (R. 1600). The court below, however, reversed on the ground that the Commission had not made findings of fact as to the value of the railroad as a whole, the value of the securities held by each class of creditors, and the value of the new securities to be issued. According to the opinion of the court below, some sixteen separate dollar and cents valua-

* The Commission found in addition that the junior claim of The Railroad Credit Corporation in the collateral pledged under the notes held by the Reconstruction Finance Corporation had no value (R. 316, 392).

tions should have been made by the Commission. The Court stated that it believed its action was required by the decision of this Court in *Consolidated Rock Products Co. v. DuBois*, 312 U. S. 510.

The decision of the court below presents questions of very substantial importance in the administration of Section 77 of the Bankruptcy Act. The Commission has already certified to the appropriate district courts numerous plans of reorganization of other railroads formulated upon the same general principles and accompanied by a report essentially the same as those involved in this case. It must, in the future, certify plans of reorganization for other railroads which are now in reorganization under Section 77. The aggregate principal amount of the outstanding loans from Reconstruction Finance Corporation alone to railroads or trustees of railroads now in reorganization whose plans of reorganization may be affected by the decision in the present case exceeds \$125,000,000. If the requirements as to valuation set forth in the decision below were to be adopted, it would probably be necessary for substantially all of the pending reorganization proceedings to be referred back to or reopened by the Commission, resulting in substantial expense and prolonged delay. It is accordingly essential to the public interest, both from the standpoint of efficient railroad operation and for the rehabilitation of railroad credit, that the validity of the Commis-

sion's procedure be settled by a definitive decision of this Court.

Due to the lack of such a definitive ruling, confusion exists in the decisions of the lower federal courts. The decision below is in square conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Matter of Chicago, Milwaukee, etc., Railroad Company*, decided December 4, 1941, now pending in this Court on a petition for writs of certiorari, Nos. 875-883, this Term, upon the question of whether stockholders can be excluded from participation in the reorganized company upon a finding that their equity is without value because the earnings of the Debtor would not support a capital structure large enough to include them. And although in other respects the Circuit Court of Appeals for the Seventh Circuit adopted the same approach as the court below, nevertheless, in *Matter of Chicago and North Western Ry. Co.*, decided February 9, 1942, it held that valuation findings, of the same type as those here involved were, in the particular circumstances of that case, sufficient.

2. An additional reason for review of the present case is the statement in the opinion of the court below (R. 2672) that the District Court had been acting under "a possible misconception" of the respective functions of the Commission and of the courts under Section 77. The court based this statement upon the fact that

the District Court had referred in its opinion to the specialized knowledge and experience of the Commission and its consequent qualification to find the ultimate facts with respect to the Debtor's financial situation. If the opinion of the court below is to be construed as requiring an independent determination by the District Court of all questions of valuation, despite an initial determination of such questions by the Commission, it constitutes, we believe, a serious misconstruction of the provisions of Section 77. So construed, the opinion is contrary to the views expressed by this Court in *Palmer v. Massachusetts*, 308 U. S. 79, 87, where the Court specifically pointed out that "the whole scheme of section 77 leaves no doubt that Congress did not mean to grant to the district courts the same scope as to bankrupt roads that they may have in dealing with other bankrupt estates."

CONCLUSION

In view of the large public importance of the questions involved and of the contrariety of views expressed by the lower federal courts, it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

CLAUDE E. HAMILTON, Jr.,

General Counsel,

Reconstruction Finance Corporation.

FEBRUARY 1942.